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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/564,134	05/28/96	KREISCHER	44-11313

IM11/0429

ROBBINS BERLINER AND CARSON
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EXAMINER
TESKIN, F

ART UNIT	PAPER NUMBER
1713	

DATE MAILED: 04/29/99 12

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/564,134

Applicant(s)

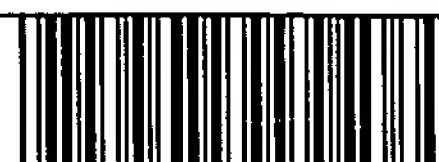
Kreischer, et al.

Examiner

Fred Teskin

Group Art Unit

1713



☒ Responsive to communication(s) filed on Jan 4, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three (3) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-14 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-6 and 12 is/are rejected.

☒ Claim(s) 7-14 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The response of January 4, 1999 has been fully considered with the following effect:

(I) the § 112 rejection of claims 7-11 and 14 as per the previous action has been obviated by applicants' amendment;

(II) the prior art rejection based on Genske et al has been obviated by the amendment to claim 1 stipulating that "the sealing layer" has a "matrix phase polymer system," with the "matrix" and "phase" polymers being selected from enumerated polymer types;

(III) the rejections of claim 12 on 112/101 grounds are maintained and applicants' arguments deemed unpersuasive as detailed below;

(IV) claims 1-6 are subject to a new prior art rejection as detailed below;

(V) claims 7-14 are newly objected to as detailed below.

2. Claims 7, 9, 11 and 12 [and claims dependent thereon] are objected to under 37 CFR 1.75(c) as being in improper multiple dependent form because a multiple dependent claims cannot depend from any other multiple dependent claim. As amended, claims 7, 9, 11 and 12 each depend from at least one other multiple dependent claim (e.g., claim 6 in the case of claim 7). Claims 7-11, 13 and 14 have not been further treated on the merits.

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3. Claim 12 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The basis of the rejection is adequately set forth in the prior action and that explanation is incorporated herein by reference.

4. Claim 12 stands rejected under 35 U.S.C. 101 because the claimed recitation of a "use," without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claims under 35 U.S.C. 101.

5. Applicants' arguments filed January 4, 1999 with respect to claims 12 have been fully considered but are not persuasive of error in the repeated rejections.

Applicants contend that steps are set forth, namely preparing (in the bag) mixed solutions as stated. Examiner disagrees. Claim 12 is plainly drawn to the "use" of a multichamber medical bag "for preparation of mixed solutions...". The "for preparation" phrase is merely a statement of intended utility of the bag, rather than

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a positive process step. Moreover, the claim recitation of a "use" is an improper definition of a process in that "use" does not describe a process. See Ex parte Dunki, 153 USPQ 678 (Bd. App. 1967).

6. The following is a quotation of the appropriate paragraph(s) of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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8. Claims 1-6 are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Gajewski et al.

The patent to Gajewski et al exemplifies (Example 2 in col. 4) fabrication of a multi-layer polymer film wherein a second layer of rubber-modified HDPE is covered on each side with layers of a blend of 70 % by weight Kraton G1650 and 30 % by weight polypropylene copolymer, and heat-sealing of layers of the resultant film. In the present invention, the "matrix" and "phase" polymers may be, inter alia, polypropylene copolymer and SEBS triblock polymer, respectively, and it is noted that the same Kraton G1650 makes up 90 % of the "SEBS compound" used in a blend with polypropylene random copolymer in applicants' Example 1. Since layers of the block copolymer-polypropylene formulation are said to cover both sides of the second layer, the former must necessarily be a "sealing layer", per claim 1, in the disclosed heat-sealing embodiment. Based on the identity of blend components and film construction, examiner has ample reason to believe that the exemplified film will intrinsically possess bonding characteristics indistinguishable from those of applicants' film.

Relative to claim 5, note the patentees' generic teaching of first-layer blends containing block copolymer in amounts which substantially overlap the claimed range (col. 1, ll. 47-54). Thus,

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it would have been obvious, prima facie, to lower the amount of block copolymer in the first-layer formulation of Example 2 to, e.g., 30 wt. % from 70 % by weight, and reasonably expect to obtain a composite film displaying commensurate improvements in properties such as clarity, seal strength and flex resistance (cf. col. 1, ll. 35-38).

Gajewski et al is thus seen to disclose a multi-layer polymer film substantially as claimed, and any additional or particular claim parameters which may not be explicitly set out in the reference(s) are considered to be inherent in the patentees' article or not to involve anything unobvious absent a showing to the contrary.

9. Applicants' arguments filed January 4, 1999 with respect to Genske et al have been fully considered but they are deemed to be moot in view of the new grounds of rejection, supra.

10. Applicants' amendment necessitated the new ground(s) of rejection/objection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final

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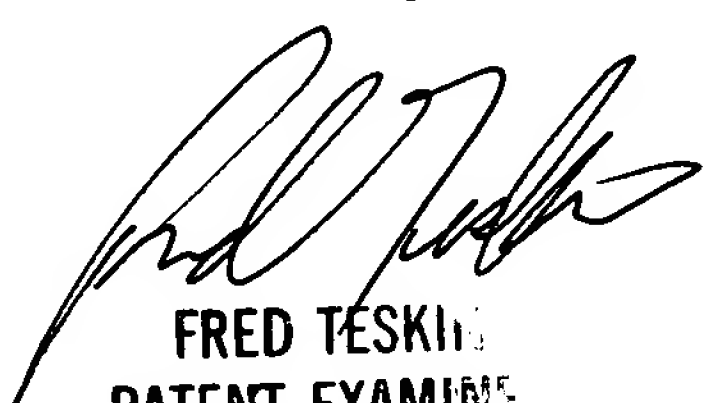
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action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (703) 308-2456.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith, can be reached on (703) 308-4345. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.



FRED TESKIN
PATENT EXAMINER
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FMT/03-29-99